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No. 87-120

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

DALE FOLTZ, WARDEN,
PETITIONER

-v-

JONATHON HOPSON,
RESPONDENT

REPLY TO ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

III

IF THIS COURT DETERMINES THAT JACKSON V VIRGINIA SETS FORTH THE PROPER STANDARD OF REVIEW FOR SUFFICIENCY OF EVIDENCE CHALLENGES IN FEDERAL HABEAS CORPUS, DID THE CIRCUIT COURT OF APPEALS ERR IN FINDING THAT THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT RESPONDENT'S CONVICTION FOR SECOND-DEGREE MURDER?

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Respondent has referred this Court to inconsistencies and contradictions in the testimony of Elaine Faye Peterson, the only eye-witness to the crime. Petitioner replies that both respondent and the Sixth Circuit Court of Appeals have failed to view the evidence in the light most favorable to the prosecution, by failing to accept to testimony of the People's witnesses as true, and drawing therefrom all fair inferences in favor of guilt. It must be noted that even though

Ms. Peterson's testimony was equivocal, and at some points even contradictory, her credibility is not at issue here. This is so even if it had not been established at trial that relatives of respondent and another participant in the criminal episode had threatened her prior to the trial.

It is the responsibility of the trier of fact to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Therefore, the appellate court should not question the credibility of the witnesses and ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. Rather, the court must ask, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt. Jackson v Virginia, 443 US 307, 319, 61 L Ed 2d 560, 99 S Ct 2781 (1979).

The facts in the light most favorable to the prosecution are that on the night of the incident, Elaine Faye Peterson went to the San-Zu-Zee Bar at Hart and Jefferson in the City of Detroit, and remained in the bar for fifteen or twenty minutes. She did not recall at what time she arrived. (T4, pp. 30, 32, 55). Respondent and the Weaver Twins were at the bar when she arrived and the victim came in later. (T4. 61). Fred Thompson was also in the bar at some point during that time. (T4. 31a). All of the parties, except for the victim, lived within a two block area. (T4. pp. 27-28, 30). Respondent, the twins, and the victim were arguing about a radio. Respondent and the twins then left the

bar, whereupon the victim approached Ms. Peterson and stated that those punks had taked his radio. The victim then left the bar, and Ms. Peterson also left a few minutes later to go to one Gerald's house. (T4. p. 35). When she left the bar she saw respondent and the twins outside arguing with the victim. The respondent and the twins told the victim to stay there until they came back, and that if he did, he would not see daylight. They further told him that where he was going he would not need a radio. (T4. pp. 34, 33a-35a, 43). Ms. Peterson then walked two blocks to Gerald's house on Hillger behind the bank on Jefferson. (T4. p. 36). To get to Gerald's house she went across Jefferson to the bank parking lot and across the alley parallel to Jefferson. She knocked at Gerald's door and when he did not answer, she left. (T4. p. 37). She retraced her steps, crossed Jefferson,

and went north to Lycaste, the street between Hart and Hillger. (T4. pp. 38, 47, 33, 85). On her way to her home on Lycaste, she saw the victim arguing with respondent and the twins by the bank at Hillger and Jefferson. (T4. pp. 28, 37a, 39, 87). She then saw Fred Thompson drive up to the bank, get out of his car with a shotgun or rifle, and join the argument concerning the radio. (T4. pp. 40-41). She then heard shots fired and ran home. (T4. pp. 58, 69).

These facts, aside from the testimony of other witnesses concerning respondent's behavior immediately after the shooting, were certainly sufficient to allow the jurors to infer that respondent and the twins procured the services of Fred Thompson in order to confront the victim, and that respondent acted in concert with Fred Thompson and the Weaver Twins with the intention to

kill, the intention to do great bodily harm, or acted in wanton and willful disregard of the likelihood that the natural tendency of his behavior was to cause death or great bodily harm. People v Aaron, 409 Mich 672, 728; 299 NW2d 304 (1980).

CONCLUSION

For the reasons stated above Petitioner submits that plenary review should be granted.

Respectfully submitted,

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